



**INTERNATIONAL TRADE COMMISSION**

**[Investigation No. 337-TA-1311]**

**Certain Centrifuge Utility Platform and Falling Film Evaporator Systems and Components Thereof;**

**Commission Decision Terminating One Respondent Based on Settlement; Issuing an Exclusion Order and Cease and Desist Orders; Terminating the Investigation**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission (“Commission”) has determined to terminate one of the seven defaulting respondents from the investigation on the basis of settlement. The Commission has also determined to issue a limited exclusion order (“LEO”) barring entry of certain centrifuge utility platform and falling film evaporator systems and components thereof that are imported by or on behalf of the six remaining defaulting respondents. The Commission has further determined to issue cease and desist orders (“CDOs”) as to three of the six remaining defaulting respondents. The investigation is terminated.

**FOR FURTHER INFORMATION CONTACT:** Sidney A. Rosenzweig, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone (202) 708-2532. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email [EDIS3Help@usitc.gov](mailto:EDIS3Help@usitc.gov). General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on May 4, 2022. 87 FR 26372 (May 4, 2022). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain centrifuge utility platform and falling film evaporator systems and components thereof by reason of infringement of claims 1, 10, and 14 of U.S. Patent No. 10,814,338 (“the ’338 patent”); claims 1, 10, and 18 of U.S. Patent No. 11,014,098 (“the ’098 patent”); and claims 1, 9, and 19 of U.S. Patent No. 10,899,728 (“the ’728 patent”). *Id.* The complaint further alleged that a domestic industry exists. *Id.* The Commission’s notice of investigation named fifteen respondents, including Ambiopharm, Inc. of Beech Island, South Carolina (“Ambiopharm”); RI Hemp Farms, LLC of West Greenwich, Rhode Island (“RI Hemp Farms”); Henan Lanphan Industry Co., Ltd. of Zhengzhou, China (“Henan Lanphan”); Toption Instrument Co., Ltd. of Xi’an, China (“Toption”); Ezhydro of Sacramento, California (“Ezhydro”); Shanghai Yuanhuai Industries Co., Ltd. of Shanghai City, China (“Shanghai Yuanhuai”); Zhangjiagang Chunk d/b/a Charme Trading Corp. of Suzhou Shi, China (“Charme”); Calpha Industries, Inc. of Laguna Hills, California (“Calpha”); Comerg, LLC of Phoenix, Arizona (“Comerg”); HX Labs, LLC of Albany, Oregon (“HX”); Idea Makers, LLC of Lake City, Utah (“Idea Makers”); Lab1st Scientific and Industrial Equipment, Inc. of Shanghai, China (“Lab1st”); Miracle Education Distributors, Inc. of Cathedral City, California (“Miracle”); Mountain Pure, LLC of Vineyard, Utah (“Mountain Pure”); and Redford Management of Los Angeles, California (“Redford”). . *Id.* at 26373. The Office of Unfair Import Investigations (“OUII”) is also participating in the investigation. *Id.*

On August 4, 2022, the Commission determined not to review an initial determination (Order No. 15) finding Ambiopharm and RI Hemp Farms in default. Order No. 15 (July 7,

2022), *unreviewed by* Comm’n Notice (Aug. 4, 2022). On August 4, 2022, the Commission determined not to review an initial determination (Order No. 21) finding Henan Lanphan and Toption in default. Order No. 21 (July 19, 2022), *unreviewed by* Comm’n Notice (Aug. 5, 2022). Also on August 4, 2022, the Commission determined not to review an initial determination (Order No. 22) finding Ezhydro in default. Order No. 22 (July 20, 2022), *unreviewed by* Comm’n Notice (Aug. 5, 2022). On August 29, 2022, the Commission determined not to review an initial determination (Order No. 26) finding Shanghai Yuanhuai and Charme in default. Order No. 26 (July 29, 2022), *unreviewed by* Comm’n Notice (Aug. 29, 2022). All other respondents named in the notice of investigation have been terminated from the investigation. Respondents Mountain Pure, Rexford, Comerg and Miracle were terminated from the investigation based on complaint withdrawal. Order No. 7 (May 25, 2022), *unreviewed by* Comm’n Notice (June 21, 2022); Order No. 20 (July 19, 2022), *unreviewed by* Comm’n Notice (Aug. 4, 2022); Order No. 24 (July 25, 2022), *unreviewed by* Comm’n Notice (Aug. 4, 2022); Order No. 25 (July 28, 2022), *unreviewed by* Comm’n Notice (Aug. 29, 2022). Respondents HX, Calpha, Lab1st, and Idea Makers were terminated based on settlement. *See* Order No. 14 (July 5, 2022), *unreviewed by* Comm’n Notice (Aug. 2, 2022); Order No. 18 (July 15, 2022), *unreviewed by* Comm’n Notice (Aug. 4, 2022); Order No. 23 (July 25, 2022), *unreviewed by* Comm’n Notice (Aug. 4, 2022).

On September 1, 2022, complainant Apeks, LLC (“Apeks”) filed a “Written Submission on Remedy, the Public Interest and Bonding.” On September 20, 2022, Apeks filed a motion to terminate the investigation as to defaulting respondent Toption based on settlement. Apeks filed a corrected version of that motion thereafter on September 23, 2022. On the same day, OUII filed a response supporting Apeks’ motion to terminate Toption from the investigation. Apeks’ motion is currently pending before the Commission.

On September 30, 2022, the Commission requested written submissions from the parties to the investigation, interested government agencies, and any other interested parties on the issues of remedy, the public interest, and bonding. Notice, 87 FR 60414 (Oct. 5, 2022). On October 14, 2022, Apeks and OUII each filed an opening submission on these issues.<sup>1</sup> On October 21, 2022, OUII filed a reply to Apeks' opening submission.<sup>2</sup> No other submissions were received.

Having examined the record of the investigation, including Apeks' corrected motion to terminate the investigation as to Toption because of settlement, and the response thereto, the Commission has determined to grant the motion to terminate the investigation as to Toption on the basis of settlement. Accordingly, for the purpose of determining remedy, the public interest, and bonding, six defaulting respondents remain: Ambiopharm, RI Hemp Farms, Henan Lanphan, Ezhydro, Shanghai Yuanhuai, and Charme (collectively, the "Defaulting Respondents").

When the conditions in section 337(g)(1)(A)-(g)(1)(E) (19 U.S.C. 1337(g)(1)(A)-(g)(1)(E)) have been satisfied, section 337(g)(1) and Commission Rule 210.16(c) (19 CFR 210.16(c)) direct the Commission, upon request, to issue a limited exclusion order or a cease and desist order or both against a respondent found in default, based on the allegations regarding a

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<sup>1</sup> Compl't Apeks' Written Submission on Remedy, the Public Interest and Bonding (Oct. 14, 2022) ("Apeks Opening Submission"); Brief of the Office of Unfair Import Investigations on Remedy, the Public Interest, and Bonding (Oct. 14, 2022) ("OUII Opening Submission").

<sup>2</sup> Reply Brief of the Office of Unfair Import Investigations on Remedy, the Public Interest, and Bonding (Oct. 21, 2022) ("OUII Reply Submission").

violation of section 337 in the Complaint, which are presumed to be true, unless after consideration of the public interest factors in section 337(g)(1), it finds that such relief should not issue.

Having examined the record of this investigation, including the submissions in response to the Commission's notice, the Commission has determined pursuant to subsection 337(g)(1) that the appropriate remedy in this investigation is an LEO prohibiting the unlicensed entry of certain centrifuge utility platform and falling film evaporator systems and components thereof that infringe one or more of claims 1, 10, and 14 of the '338 patent and claims 1, 10, and 18 of the '098 patent, and that are imported by or on behalf of Ambipharm, RI Hemp Farms, Shanghai Yuanhui, or Charme. In addition, and consistent with the infringement allegations in the complaint, the LEO prohibits the unlicensed entry of certain centrifuge utility platform and falling film evaporator systems and components thereof that infringe one or more of claims 1, 9, and 19 of the '728 patent, and that are imported by Henan Lanphan, EZhydro, or Shanghai Yuanhuai. The Commission has further determined to issue cease and desist orders directed to the domestic respondents, Ambipharm, RI Hemp Farms, and Ezydro. Because there is no support in the record for commercially significant U.S. inventories and/or significant commercial business operations in the United States as to the foreign respondents, Henan Lanphan, Shanghai Yuanhai, or Charme, the Commission, consistent with its customary practice, declines to issue cease and desist orders as to them.<sup>3</sup> *See Electric Skin Care Devices*, Comm'n Op. at 29-30. The

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<sup>3</sup> Commissioners Karpel and Schmidlein would have issued cease and desist orders as to the foreign defaulting respondents, regardless of domestic business operations or inventories, for the reasons explained in, for example, *Certain Vaporizer Cartridges and Components Thereof*, Inv. No. 337-TA-1211, Comm'n Op. at 13-14 (Mar. 1, 2022).

Commission finds that the public interest factors enumerated in subsection 337(g)(1) do not preclude the issuance of the LEO or the CDOs.

As to bonding, Apeks argues that 19 U.S.C. 1337(j)(3) “does not authorize the Commission to permit defaulted respondents subject to an exclusion order under” 19 U.S.C. 1337(g)(1) “to import infringing products under bond during the Presidential review period.” Apeks Opening Submission at 10. In the alternative, Apeks asserts that bond during the period of Presidential review should be set at one hundred percent (100%) of the entered value of the imported articles that are the subject of the LEO. *Id.*

In response, OUII asserts that the Commission has the discretion to impose a bond during Presidential review. OUII Reply Submission at 2. OUII further notes that it is customary for the Commission to include bonding provisions even as to defaulting respondents. *Id.* at 2-3.

Having reviewed the text and legislative history of section 337,<sup>4</sup> the Commission notes that its consistent practice, including before and after the 1994 amendments to section 337, has been to impose a bond during the Presidential review period, including as to defaulting parties. *E.g., Certain Toothbrushes and the Packaging Thereof*, Inv. No. 337-TA-391, Comm’n Notice, 62 FR 54855 (Oct. 22, 1997); *Certain Electrical Connectors and Products Containing Same*, Inv. No. 337-TA-374, Comm’n Notice, 61 FR 21208 (May 9, 1996); *Certain Woodworking Accessories*, Inv. No. 337-TA-333, Comm’n Notice, 58 FR 4718 (Jan. 15, 1993); *Certain Soft*

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<sup>4</sup> See, e.g., Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, §§ 1341-1342, 102 Stat. 1107, 1211-16 (1988); H.R. Rep. No. 100-40 (Part I), at 160-62 (1987); S. Rep. No. 100-71, at 132 (1987); Uruguay Round Agreements Act, Pub. L. No. 103-465, § 321, 108 Stat. 4809, 4943-44 (1994); S. Rep. 103-412, at 120 (1994).

*Drinks and Their Containers*, Inv. No. 337-TA-321, Comm’n Notice, 57 FR 304 (Jan. 3, 1992); *Certain Key Blanks for Keys of High Security Cylinder Locks*, No. 337-TA-308, Comm’n Notice, 55 FR 35372 (Aug. 29, 1990). The Commission finds no indication that Congress intended to constrain the Commission’s authority to impose a bond during the Presidential review period as to defaulting respondents nor any statutory constraint that would override the Commission’s long-standing practice. Further, the Commission notes that it has “broad discretion in selecting the form, scope and extent of the remedy.” *Viscofan, S.A. v. United States Int’l Trade Comm’n*, 787 F.2d 544, 548 (Fed. Cir. 1986). Accordingly, the Commission finds that it is within its remedial discretion to allow bonding during the Presidential review period as to the Defaulting Respondents. Accordingly, in this investigation, the Commission has determined that the bond during the period of Presidential review pursuant to section 337(j) (19 U.S.C. 1337(j)) shall be in the amount of one hundred percent (100%) of the entered value of the subject articles as requested by Apeks.<sup>5</sup> The investigation is terminated.

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<sup>5</sup> Commissioner Schmidlein agrees with Apeks’ argument that section 337 does not authorize the Commission to permit the Defaulting Respondents to import infringing products under bond during the Presidential review period. To her knowledge, this is the first time this issue has been raised by a party in an investigation. She observes that the bonding provision of the statute, section 337(j)(3), only authorizes importation during the Presidential review period under bond for “articles directed to be excluded from entry under subsection (d) or subject to a cease and desist order under subsection (f).” The Defaulting Respondents are subject to remedial relief under subsection (g) not subsections (d) or (f). Subsection (g) governs remedial relief for respondents that do not participate in 337 investigations. By the plain language of section 337(j)(3), the ability to import under bond is unavailable for default remedies issued under subsection (g). Commissioner Schmidlein finds nothing in the legislative history that speaks to this issue and even if it did it could not be used to change the plain language of the statute. *See*

The Commission vote for this determination took place on March 23, 2023.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR Part 210).

While temporary remote operating procedures are in place in response to COVID-19, the Office of the Secretary is not able to serve parties that have not retained counsel or otherwise provided a point of contact for electronic service. Accordingly, pursuant to Commission Rules 201.16(a) and 210.7(a)(1) (19 CFR 201.16(a), 210.7(a)(1)), the Commission orders that the Complainant complete service for any party/parties without a method of electronic service noted on the attached Certificate of Service and shall file proof of service on the Electronic Document Information System (EDIS).

By order of the Commission.

Issued: March 23, 2023.

**Lisa Barton,**

*Secretary to the Commission.*

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*In re City of Houston*, 731 F.3d 1326, 1333 (Fed. Cir. 2013) (legislative history cannot be used to contravene the plain language of statute). She also does not agree that the discretion retained by the Commission when it comes to selecting the form, scope and extent of the remedy permits it to act contrary to the plain language of the statute. She would therefore grant Apeks' request and not authorize the Defaulting Respondents to import infringing products under bond during the Presidential review period.